

**STATEMENT OF  
ZACK HEARN, DEPUTY DIRECTOR FOR CLAIMS OF THE VETERANS AFFAIRS  
AND REHABILITATION COMMISSION OF THE AMERICAN LEGION  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
PENDING LEGISLATION**

**JANUARY 27, 2015**

**H.R. 189: The Servicemember Foreclosure Protections Extension Act of 2015**

*To extend foreclosure and eviction protections for servicemembers, and for other purposes.*

Despite the overall economic recovery across our nation, some military service members, particularly those leaving active duty, continue to face financial challenges.

Those challenges may include the need to find new employment after leaving active duty service, among other things. Additionally, a slow recovering real estate market in some areas of the country can make it difficult for military members to sell their homes or purchase new ones upon receiving new orders. These financial challenges still exist for many service members, particularly those re-acclimating to civilian life after serving abroad.

The Servicemembers Civil Relief Act (SCRA) provides financial services protections such as interest rate relief and foreclosure protection for military personnel serving on active duty. Some of these financial services protections extend for a period of time post-active service including the current one year protection from foreclosure for military homeowners that originated their mortgage prior to their active service.

The American Legion believes the protections provided in SCRA are essential to safeguarding those who serve, and their families, from unnecessary financial stress and peril<sup>1</sup>.

**The American Legion supports the passage of this legislation.**

**H.R. 216: The Department of Veterans Affairs Budget Planning and Reform Act of 2015**

*To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to submit to Congress a Future-Years Veterans Program and a quadrennial veterans review, to establish in the Department of Veterans Affairs a Chief Strategy Officer, and for other purposes.*

This legislation, broad in scope, seeks to formalize planning procedures and develop tools for use, both within VA and by outside but vital stakeholders such as Congress and Veteran Service

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<sup>1</sup> American Legion Resolution No. 324: *Support and Strengthen the Servicemembers Civil Relief Act (SCRA)* – AUG 2014

Organizations (VSOs), to determine whether VA budgeting is on track to meet their goals and deliver benefits and services to the nation's veterans. The intention of the legislation is admirable, as more transparency and access to more data is helpful for all stakeholders to ensure VA is moving forward in the direction that will best meet the needs of veterans. The very important concepts outlined in this legislation merit discussion on a section by section basis, and the following points should be considered if this legislation moves forward.

**Future-Years Program:** This section outlines the mission for VA to create a "Future-Years Veterans Program" to coincide with the annual budget submission. The Future-Years program would be similar to the budget, but would also cover expected expenses over a five year period. The first two years of the Future-Years program would exactly mirror the budget submission (which presumably would cover two years in anticipation of advanced appropriations) but would also contain out year projections to meet the goals of VA in seeing to the needs of the nation's veterans. This process potentially could be useful to outside observers, as if VA were to suddenly lower funding from a key project in one year's budget, and not reflect a down the road increase, it would immediately raise red flags as to how they still intended to meet the outcome down the road with drastically reduced funding.

Furthermore, by comparing the Future-Year plans from year to year, within a brief period, any budgetary legerdemain would presumably become glaringly obvious. An example of this type of behavior can be seen with recent underfunding of VA's Construction budgets. Despite the fact that VA has a Strategic Capital Investment Planning (SCIP) program to determine long term construction needs, the budget request for Major and Minor Construction over the past few years were low. As noted by past National Vice Commander of The American Legion William Schrier before the Senate Veterans' Affairs Committee<sup>2</sup>, VA's SCIP plan called for \$65 billion in projects over the next ten years, which should have amortized to approximately \$6.5 billion a year in construction costs, yet VA's own ask was less than \$2 billion. This glimpse into the longer term picture was what prompted The American Legion to push for more funding for Construction so VA would not fall behind their SCIP program needs. Sadly, the budget was not increased, but perhaps with better tools to see the discrepancies, Congress will also be able to recognize these shortfalls and help adjust VA's budget upwards when critical goals are in danger of not being met.

**Quadrennial Veterans Review:** This would require, starting in Fiscal Year (FY) 2017 and every four years thereafter, a review of the commitments of the United States to veterans and a determination of what resources are necessary to deliver on those commitments. This review would be comprehensive in scope, would examine all policies and strategies, and would require consultation not only within the Department, but with other governmental bodies, as well as State and local governments, tribal officials, private sector and academic concerns, and importantly members of VSOs.

Herein lies a major concern of The American Legion, as the full role of VSOs is not clearly delineated, and it is unclear what is meant by re-examining the commitments of the United States to veterans. In certain cycles, when the blood sacrifices of our nation's veterans are less

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<sup>2</sup> Statement of William F. Schrier, Department of Washington on behalf of The American Legion before the Committee on Veterans Affairs, United States Senate, February 29, 2012

prominent on the nightly news, there are forces that rise to question why we provide compensation to our veterans. Though the devastating effects of exposure to the chemical defoliant Agent Orange were only brought to light by the tireless efforts of advocates like The American Legion, there are those who would roll back the clock on hard fought gains for those Vietnam veterans who have suffered devastating effects and terrible disabilities because of exposure. When the eyes of the nation are not squarely on the wounded veterans, there are those who would question the entire system of VA disability.

The rise of such attitudes and how they might factor in to “a re-examination of the commitments of the United States to its veterans” is deeply troubling to The American Legion. The American Legion strongly opposes any administrative or legislative proposals to dilute or eliminate any provision of the disability compensation program<sup>3</sup>. In order to ensure the voice of those most important to an overview of VA commitments, the veterans who would be affected, is not lost there would have to be clearer direction about the nature of VSO involvement in the evaluation process.

Already VSOs contribute greatly to the tools Congress and VA have at their disposal to evaluate the effectiveness of VA programs. The American Legion provides annual “System Worth Saving” reports on the effectiveness of health care delivery in the VHA system, as well as “Regional Office Action Review” assessments of VBA claims processing. VSOs are clear experts in VA programs, and their essential role in the evaluation of VA should be reflected.

**Section III:** This section would designate a Chief Strategy Officer (CSO) for the Department of Veterans Affairs. The CSO would be a principal advisor to the Secretary, and would advise on long range strategic planning and the implications of such planning. This would include, but not be limited to, such tasks as cost estimation, integration of planning, analysis on the planning and programming phases of the new system, and developing and executing the Future-Years Program. This would be done to give this new system appropriate heft and weight within the Department, and ensure the work of planning the future programs was not circumvented by other concerns.

**Section IV:** This section provides for a study on the functions and organizational structure of the office of the Secretary of Veterans Affairs and of VA in general. As with any major change in scope to an organization’s long range planning mechanisms, a study of the existing systems in place is warranted. The study mandated by this legislation will take place no later than one year after the enactment of the legislation.

Overall, the importance of ensuring VA has proper tools in place for long range strategic planning is something The American Legion supports. We are continuing to study and evaluate the matter, and are working with our membership and leadership to analyze the legislation as it evolves to develop a position that reflects what is best for the veterans of America. We appreciate the Ranking Member’s diligence and attention to VA’s resources in bringing the legislation forward, and hope to continue to work with Ms. Brown and the committee to ensure the best outcome for America’s veterans.

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<sup>3</sup> American Legion Resolution 18: *Department of Veterans Affairs (VA) Disability Compensation*, AUG 2014

**The American Legion supports the passage of this legislation.**

**H.R. 245:**

*To amend title 38, United States Code, to codify certain existing provisions of law relating to effective dates for claims under the laws administered by the Secretary of Veterans Affairs, and for other purposes.*

A little over a year ago, in the Federal Register, VA promulgated a proposed rule change<sup>4</sup> which, though potentially innocuous on the surface, could negatively impact veterans. The change, insisting that all initial claims *must* be filed on a specific VA form, effectively eliminates the current “informal claim” which has been important for protecting the effective dates of veterans’ claims.

Through the elimination of the traditional informal claim, VA eliminates the opportunity to create an effective date at the point where the veteran opts to pursue a disability claim. Our understanding of the proposed regulation affects only the veterans seeking disability compensation through non-electronic means. If a veteran applies for disability compensation through electronic means through the submission of an “incomplete application”, VA will establish an effective date at the time of the incomplete application submission as long as the veteran submits a complete application within one year.

Through adoption of these changes, VA will essentially create a division between veterans with internet access and those without internet access. According to the National Center for Veterans Analysis and Statistics, the average age of male veterans was 64 years old in 2011<sup>5</sup>; the United States Census Bureau reported that only 45.5 percent of Americans (veteran and non-veteran) age 65 and older have access to the internet from any location<sup>6</sup>. Assuming these statistics are similar in the veteran community as the non-veteran community regarding internet accessibility, VA could be potentially eliminating for millions of veterans an appropriate effective date simply by virtue of whether the veteran has access to the internet.

Beyond the issue surrounding informal claims is the status of inferred claims. The proposed regulation suggests that the veteran would no longer be permitted to receive a grant for service connection based upon an inferred claim as the veteran never filed for the claim. Frequently, a veteran may have secondary or aggravated conditions by a service connected condition the veteran is seeking. If the veteran receives the appropriate nexus statement supporting this relationship either from a VA medical professional or an outside medical professional, the veteran under current regulations is entitled to receive these benefits; however, under this proposal, this would not occur.

Ultimately, The American Legion is concerned VA is sacrificing veterans’ choices and options in the interest of making the claims system easier for VA to work with. However, the disability

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<sup>4</sup> “RIN 2900-AO81—Standard Claims and Appeals Forms” - 78 Fed. Reg. 65,490 (October 31, 2013)

<sup>5</sup> [http://www.va.gov/vetdata/docs/SpecialReports/Profile\\_of\\_Veterans\\_2011.pdf](http://www.va.gov/vetdata/docs/SpecialReports/Profile_of_Veterans_2011.pdf)

<sup>6</sup> <http://www.census.gov/prod/2013pubs/p20-569.pdf>

claims system does not exist to serve VA; it exists to serve the veterans disabled through service to their country.

While it may be beneficial, both for veterans and the VA, to have veterans submit claims in a certain fashion, such as through the Fully Developed Claims (FDC) process or through the eBenefits portal, not every veteran is going to find that choice in their best interest or find that choice to be the one that meets their particular set of needs. There are better ways to approach channeling veterans towards the proper path for receiving benefits.

The system for adjudicating claims for disability benefits for veterans is different and it has been recognized that “the character of the veterans’ benefits statutes is strongly and uniquely pro-claimant.”<sup>7</sup> Indeed the core mission and goal of the Department of Veterans Affairs (VA) is to care for and assist veterans through that process. This legislation singles out and reinforces VA’s commitment to two key components of that commitment. We cannot take away veterans’ rights to choose the options for their claims that best suit their needs. To eliminate or substantially reduce informal and inferred or “reasonably raised” claims would be a dilution of longstanding appellate rights in the veterans’ claims system, a concept that is anathema to The American Legion which strongly opposes any administrative or legislative proposal to dilute or eliminate any provision of the disability compensation system<sup>8</sup>.

**The American Legion supports the passage of this legislation.**

**H.R. 280:**

*To authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs.*

The Department of Veterans Affairs (VA) has come under scrutiny by Congress, veteran service organizations, media and in the veterans community for its failures in leadership performance and accountability which has resulted in numerous quality of care issues, patient safety issues and veteran deaths, yet, VA executives who presided over the mismanagement and negligence were more often than not to have received a bonus.

When an executive receives a bonus after overseeing a system that failed veterans and caused suffering, it erodes the confidence of those veterans in the system meant to serve them. The problem is relatively widespread as “more than \$380,000 in bonuses were awarded last year [2013] to directors and top executives at 38 VA hospitals where investigators are looking into claims of falsified appointment records or where there have been excessive delays in patient care<sup>9</sup>.” Furthermore, in Pittsburgh, a VA regional director famously received a \$63,000 bonus

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<sup>7</sup> Hodge v. West, 155 F.3d 1356, 1362 (Fed. Cir. 1998); see also Hayre v. West, 188 F.3d 1327, 1333-34 (Fed. Cir. 1999) (pointing out Congress’ recognition of “the strongly and uniquely pro-claimant system of awarding benefits to veterans” )

<sup>8</sup> American Legion Resolution 18: *Department of Veterans Affairs (VA) Disability Compensation* – AUG 2014

<sup>9</sup> “VA Bonuses went to Officials at Delay-Prone Hospitals,” – USA Today, July 4, 2014

despite at least five veterans dying from exposure to a *Legionella* bacterium outbreak in the Pittsburgh VA medical system he oversaw<sup>10</sup>.

The American Legion strongly believes accountability is critical to establishing and maintaining trust with the veterans' community. The American Legion supports the use of special prosecutors to investigate and vigorously prosecute any VA employees engaged in fraudulent practices designed to improperly award bonuses or other financial or meritorious awards to the perpetrator<sup>11</sup>. Furthermore, The American Legion believes all VA bonuses must be based on transparent, public, qualitative and quantitative measures<sup>12</sup>. Where this is found not to be the case, these employees should not benefit at the expense of veterans.

**The American Legion supports the passage of this legislation.**

**H.R. 294: The Long Term Care Veterans Choice Act**

*To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to enter into contracts and agreements for the transfer of veterans to non-Department medical foster homes for certain veterans who are unable to live independently.*

Adult Foster Care homes are homes that provide veterans with an alternative setting to traditional nursing home elder care. Adult Foster Care homes are single family homes which provide room, board and supervision, and personal care services.

The American Legion has no resolutions addressing the efficacy of these living arrangements as opposed to more traditional nursing care, therefore The American Legion neither supports, nor opposes these homes at this time.

**The American Legion has no position on this legislation.**

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<sup>10</sup> "Pittsburgh victims' kin outraged over VA official's award"- Pittsburgh Post-Gazette, May 2, 2013

<sup>11</sup> American Legion Resolution No. 107: *Prosecution of VA Employees Engaged in Fraudulent Practices in the Department of Veterans Affairs* – AUG 2014

<sup>12</sup> American Legion Resolution No. 128: *Increase the Transparency of the Veterans Benefits Administration's Claims Processing* – AUG 2014